


 **Lusty, John (Vol. 01) - 11/14/2003**

1 CLIP (RUNNING 01:41:02.500)

 **JURY TRIAL - DAY 5 SEPTEMBER 19, 2006****LUSTY1****97 SEGMENTS (RUNNING 01:41:02.500)****1. PAGE 5:24 TO 6:11 (RUNNING 00:00:16.100)**

24 THE VIDEOGRAPHER: Will the Officer please
6

00006:01 identify yourself and swear in the witness?

02 THE REPORTER: My name is Patricia
03 Armstrong from Espiritu & Associates, Chicago,
04 Illinois.

05 (The witness was thereupon
06 duly sworn.)

07 JOHN W. LUSTY
08 called as a witness herein, having been first
09 duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

2. PAGE 7:22 TO 9:12 (RUNNING 00:01:26.800)

22 Would you state your full name
23 and your address for the record, please?

24 A. Yes. John W. Lusty, 1336 Macks Fly
00008:01 Drive, Akron, Ohio, 44312.

02 Q. You are also known as Jack Lusty; is
03 that right?

04 A. That's correct.

05 Q. I will try to call you Mr. Lusty, so
06 we avoid John versus Jack. But don't you usually
07 go by Jack?

08 A. Yes.

09 Q. Mr. Lusty, you are Mr. Yeager's
10 district manager; is that right?

11 A. That's correct.

12 Q. You are employed by Mack Trucks?

13 A. Yes.

14 Q. How long have you been employed by
15 Mack Trucks?

16 A. Approximately 26 years.

17 Q. How long have you been Mr. Yeager
18 and Toledo Mack's district manager?

19 A. About seven years.

20 Q. What did you do for Mack before you
21 were Mr. Yeager's district manager? Just very
22 general; we don't need to go on through the
23 years?

24 A. I just had about every job within
00009:01 the company from service department, used truck
02 sales, new truck sales, fire apparatus, leasing
03 specialist, front discharge mixer rep, medium
04 duty manager, district manager, medium duty fleet
05 sales and national account sales and also back to
06 district manager.

07 Q. You are currently a district manager
08 for the Lakes District; is that right?

09 A. That's correct.

10 Q. And the Lakes District is in the
11 central region?
12 A. Yes, sir.

3. PAGE 9:21 TO 9:23 (RUNNING 00:00:06.500)

21 Q. How many dealers are currently in
22 the Lakes District?
23 A. 14 dealers and 16 locations.

4. PAGE 9:24 TO 10:22 (RUNNING 00:00:44.400)

24 Q. Have you been a district manager for
00010:01 any districts other than the Lakes District?
02 A. Yes.
03 Q. Could you tell me about that?
04 A. That was in the old eastern region
05 and it's now the Allegheny District. That was
06 out of Pittsburgh and Western Pennsylvania area.
07 Q. What time frame are we generally
08 talking about there? Give me the decade.
09 A. Probably 10 or 12 years ago.
10 Q. Early '90s?
11 A. Yes.
12 Q. You said you also had some
13 involvement with national account sales; is that
14 right?
15 A. Yes.
16 Q. What is national account sales?
17 A. National accounts sales is a
18 position where you sell to national account
19 companies established by Mack Trucks.
20 Q. Mack Truck sells to the national
21 account?
22 A. That's correct.

5. PAGE 17:24 TO 19:24 (RUNNING 00:01:50.900)

24 Q. Now as district manager, are you the
00018:01 person at Mack that has most of the interaction
02 with dealers within your region?
03 A. Yes.
04 Q. Do you visit dealers within your
05 region?
06 A. Yes.
07 Q. How frequently do you do that?
08 A. Some every month, some every other
09 month; six day week cycle I would think.
10 Q. Are you in pretty constant contact
11 with dealers over the phone and through e-mail
12 and things like that?
13 A. Almost daily.
14 Q. And just generally, how would you
15 describe your responsibilities as a district
16 manager?
17 A. To promote the sales and marketing
18 efforts of Mack Trucks, to help the dealers with
19 inventory control and investments, customer
20 contacts, specifications, reviewing
21 specifications or questions about componentry;
22 anything that would entail from the time the
23 truck leaves the manufacturing plant to its
24 retail to the end users.
00019:01 Q. You don't have anything to do with

02 direct sales by Mack to national accounts, do
 03 you?
 04 A. I do not as a district manager.
 05 Q. All your responsibilities have to do
 06 with selling trucks through your dealers, right?
 07 A. That's correct.
 08 Q. Who do you report to?
 09 A. To Jeff Yelles.
 10 Q. Mr. Yelles then reports to
 11 Mr. Flaherty; is that right?
 12 A. That's correct.
 13 Q. Do you report at all to
 14 Mr. Flaherty?
 15 A. I ultimately look at him as
 16 executive vice president of sales, and I have an
 17 obligation to Mr. Flaherty probably.
 18 Q. But your direct report and the
 19 person you have the most dealing with is
 20 Mr. Yelles?
 21 A. That's correct.
 22 Q. How long have you worked for
 23 Mr. Yelles?
 24 A. Five years and a month or so.

6. PAGE 21:20 TO 25:02 (RUNNING 00:03:20.000)

20 Q. Now, various pages in here appear to
 21 me, Mr. Lusty to be from a calendar or a
 22 Daytimer. I don't know which it is?
 23 A. A Daytimer.
 24 Q. Is that something that you have
 00022:01 maintained throughout the years?
 02 A. Yes.
 03 Q. Is that a Daytimer that you have
 04 maintained in connection with the performance of
 05 your duties as a district manager?
 06 A. Yes.
 07 Q. What do you use that Daytimer for?
 08 A. Appointments, note taking, a number
 09 of things, but it's in the daily conduct of
 10 business.
 11 Q. I see on a number of pages, dates.
 12 A. What do you mean?
 13 Q. Take, for example, the second page.
 14 I see a date there; 3-13-01 at the top.
 15 A. Yes.
 16 Q. If we go through the document -- and
 17 we will go through it in a little more detail, I
 18 see throughout different dates written down, four
 19 different paragraphs.
 20 What does the date indicate?
 21 A. It's the dates that the note was
 22 taken; the time and date.
 23 Q. Why did you make these notes, sir?
 24 A. I have taken notes all my life about
 00023:01 a lot of things. I take a lot of business notes
 02 and some of these notes were personal.
 03 I thought the decisions or
 04 statements or responses were noteworthy at that
 05 time.
 06 Q. These notes all -- strike that.
 07 Was that also something that

08 you did in connection with your performance of
09 your duties as a district manager?

10 A. Yes.

11 Q. Now, did you write anything down,
12 sir, or would you right anything down if it
13 wasn't something that had actually happened?

14 A. No.

15 Q. So if something is written down
16 here, Mr. Lusty, is that a accurate report from
17 you as to exactly what happened?

18 MR. HEEP: I am just going to object to
19 the vagueness of the question and foundation.

20 Are you asking him to testify
21 as to the accurateness of an awful lot of pages
22 here?

23 BY THE WITNESS:

24 A. It was as accurate as I could be at
00024:01 the time of the note taking.

02 BY MR. MACK:

03 Q. You were taking these notes right at
04 or about the time the event happened; right?

05 A. Yes.

06 MR. HEEP: Same objection.

07 BY MR. MACK:

08 Q. You wanted to memorialize what had
09 happened; right?

10 MR. HEEP: Same objection.

11 BY THE WITNESS:

12 A. I wanted to make a note of what
13 taken place.

14 BY MR. MACK:

15 Q. Now, you have been through these
16 notes at your prior deposition; a number of these
17 notes; right?

18 A. Some of them. I don't have all of
19 them, but yes.

20 Q. As we sit here today, Mr. Lusty, are
21 you aware of anything that you wrote down in your
22 Daytimer or on a note that was produced in this
23 litigation that you believe is untrue?

24 MR. HEEP: Same objection.

00025:01 BY THE WITNESS:

02 A. No.

7. PAGE 25:13 TO 27:05 (RUNNING 00:01:41.200)

13 Q. Have you ever heard or received any
14 complaints about Mr. Yeager selling outside his
15 area of responsibility?

16 A. Yes.

17 Q. Have you ever heard or received any
18 complaints about Mr. Yeager selling at a low cost
19 price?

20 A. Yes.

21 Q. Have those complaints come from
22 people at -- strike that.

23 Have those complaints about
24 Mr. Yeager selling outside his AOR come from
00026:01 people at Mack?

02 A. Yes.

03 Q. Have they come from Mr. Yelles?

04 A. Yes.

05 Q. Have they come from other district
06 managers?

07 A. Yes.

08 Q. Can you tell me, sir, what other
09 district managers you recall having complained
10 about Mr. Yeager selling outside his AOR?

11 A. John McCafferty, Dave Barletta, Jim
12 Lockery, a little bit.

13 Q. And where is Mr. Lockery?

14 A. He is a district manager in the
15 central region.

16 Q. Have you received any complaints
17 from anyone else at Mack about Mr. Yeager selling
18 outside his AOR?

19 A. Jeff Yelles.

20 Q. Go ahead?

21 A. A comment or two from Steve Polzer;
22 a couple of phone conversations I had.

23 Q. Have you received any complaints
24 about Mr. Yeager selling outside his AOR from
00027:01 other dealers?

02 A. Yes.

03 Q. Would those be other dealers in the
04 Central Region?

05 A. Yes.

8. PAGE 27:06 TO 27:14 (RUNNING 00:00:37.500)

06 Q. Can you just tell me, sir, what
07 dealers have complained about Mr. Yeager selling
08 outside his AOR?

09 A. Flag City, R & R in Akron, R & R in
10 Youngstown. That's the Youngstown-Cleveland
11 group. Diesel Truck sales in Saginaw, Michigan.
12 There must have been some chatter along the way.
13 A number of dealers, I mean, yeah. That's as
14 good as it get.

9. PAGE 27:17 TO 27:23 (RUNNING 00:00:12.600)

17 Mr. Yeager attempts to sell,
18 promote the sale of trucks at a low price,
19 doesn't he?

20 A. Yes, he does.

21 Q. He advertises low prices; is that
22 right?

23 A. That's correct.

10. PAGE 28:19 TO 29:22 (RUNNING 00:00:49.500)

19 Q. Now, have people at Mack Trucks,
20 Inc. complained about Mr. Yeager's low cost
21 pricing?

22 A. Yes.

23 Q. Has Mr. Yelles done that?

24 A. Yes.

00029:01 Q. Have other district managers done
02 that?

03 A. Yes.

04 Q. Mr. McCafferty?

05 A. Yes.

06 Q. Mr. Barletta?

07 A. Yes.

08 Q. Am I missing anyone?

09 A. There were some from out of the
10 region that had made some comment.
11 Q. Who from out of the region?
12 A. Mike Maddox from the southern,
13 southeast region.
14 Q. He is a district manager?
15 A. He is a district manager. Just some
16 chatter from some other ones. I can't remember
17 the specifics but --
18 Q. Chatter, but it wasn't "Mr. Yeager's
19 doing a great job selling at a low price?"
20 A. Correct.
21 Q. It was derogatory or negative?
22 A. Yes.

11. PAGE 30:02 TO 30:19 (RUNNING 00:00:40.100)

02 Q. Now, have you also heard, sir, from
03 Mack dealers about Mr. Yeager's low cost pricing?
04 A. From other Mack dealers?
05 Q. Yes.
06 A. Yes.
07 Q. Would those be dealers within the
08 Central Region?
09 A. Yes.
10 Q. Have you heard from any dealers
11 outside the central region about that?
12 A. No.
13 Q. What dealers in the central region
14 have complained to you about Mr. Yeager's low
15 cost pricing?
16 A. The dealers that I mentioned in my
17 previous statement. I didn't hear it from the
18 actual -- some of the actual other dealers but
19 through their district managers.

12. PAGE 30:20 TO 30:22 (RUNNING 00:00:05.100)

20 Q. And that would be Mr. McCafferty or
21 Mr. Barletta reporting back to you?
22 A. Yes.

13. PAGE 31:09 TO 33:03 (RUNNING 00:02:08.900)

09 Q. And this is April 2001 diary
10 records. These are your notes; right?
11 A. Yes.
12 Q. I want you to go down to the middle
13 of the page where it says April 19th, 4-19.
14 Can you read into the record,
15 sir, what you wrote there on April 19th?
16 A. Yes on 4-19, I had a cell call from
17 Jeff Yelles to me at just about 4:00 o'clock p.m.
18 and I was at the Brecksville Holiday Inn parking
19 lot. I had a sore back from driving. Jeff
20 Yelles to JL, which is me. D567, which is Toledo
21 Mack, called Bulkmatic and promoted parts and
22 truck pricing. Jeff Yelles, this has to stop.
23 Jeff Yelles will not release the discount. This
24 is an established dealer account. There is more
00032:01 to this deal than truck pricing. This dealer
02 does not sell in his own AOR. I am not going to
03 let him queer this account. Jeff Yelles to JL,
04 which is me, JL has to let Dave Yeager know this,

05 but not this weekend. And I -- parentheses -- I
 06 guess after the ATDA in Baltimore.
 07 Q. The statements that you read from
 08 Mr. Yelles, and I see you begin it with a
 09 quotation mark. Is that the actual words that he
 10 used?

11 A. Yes.

12 Q. "This has to stop." That's what he
 13 said?

14 A. Yes.

15 Q. He was referring to the attempt by
 16 Mr. Yeager to sell a truck to a company known as
 17 Bulkmatic?

18 A. Yes.

19 Q. Was that an established dealer
 20 account?

21 A. This dealer had been selling them,
 22 yes.

23 Q. What dealer had been selling to
 24 Bulkmatic?

00033:01 A. Chicago Mack Sales and Service.

02 Q. Mr. Yacobozzi's company?

03 A. That's correct.

14. PAGE 33:13 TO 34:19 (RUNNING 00:01:22.500)

13 Is this a fax that you sent to
 14 Mr. Yelles on May 7, 2001?

15 A. Yes.

16 Q. And the -- was this following up on
 17 an instruction of you received from Mr. Yelles?

18 A. Yes.

19 Q. What instruction had you received?

20 A. That this has to stop. He is not
 21 going to release the Bulkmatic pricing discount
 22 to Toledo Mack.

23 Q. That telephone conversation you just
 24 told us about?

00034:01 A. Yes.

02 Q. You say in this fax, "Per our
 03 discussion, I have expressed to Dave his
 04 predatory approach to customer prospecting has to
 05 cease and he should focus on marketing his
 06 assigned area of responsibility."

07 Was that something Mr. Yelles
 08 had told you to tell Mr. Yeager?

09 A. That's why I wrote the fax, yes.
 10 That was an instruction from Jeff Yelles.

11 Q. So you were doing what your boss
 12 told you to do?

13 A. That's correct.

14 Q. Had you said that to Mr. Yeager?

15 A. Yes. I am sure I did.

16 Q. Was that something that you
 17 personally agreed with?

18 A. That's something that I was
 19 instructed to do by my boss.

15. PAGE 34:20 TO 35:04 (RUNNING 00:00:15.900)

20 Q. I understand that.

21 What I am asking you is
 22 whether -- I understand you did what your boss

23 told you to do.

24 But I am not asking about you
00035:01 personally, Jack Lusty. And let me ask it to you
02 this way. If you had not been told by Mr. Yelles
03 to do that, would you have done it?
04 A. No, I wouldn't.

16. PAGE 35:09 TO 35:09 (RUNNING 00:00:00.800)

09 A. No.

17. PAGE 35:10 TO 35:15 (RUNNING 00:00:08.300)

10 Q. So I take it this wasn't your idea,
11 this was his idea?
12 A. Yes.
13 Q. This was something you personally
14 did not agree with; is that right?
15 A. Correct.

18. PAGE 37:03 TO 37:08 (RUNNING 00:00:24.000)

03 Q. Where did you come up with the word,
04 sir, the reference to a predatory approach to
05 customer prospecting; second paragraph?
06 A. That was a term what Jeff Yelles had
07 used to me in expressing his concern about the
08 advertising.

19. PAGE 37:09 TO 37:19 (RUNNING 00:00:17.800)

09 Q. Had Mr. Yelles explained to you what
10 is predatory about it?
11 A. No, not in detail.
12 Q. Was it predatory because he was
13 selling outside his territory?
14 A. Yes.
15 Q. Or that's what Mr. Yelles believes
16 as you understood it?
17 A. Yes.
18 Q. You didn't feel Mr. Yeager was being
19 predatory, did you?

20. PAGE 37:22 TO 38:01 (RUNNING 00:00:02.100)

22 A. No.
23 BY MR. MACK:
24 Q. He was just trying to get business;
00038:01 right?

21. PAGE 38:04 TO 38:04 (RUNNING 00:00:00.900)

04 A. Yes.

22. PAGE 38:09 TO 38:12 (RUNNING 00:00:14.700)

09 Is sales assistance available
10 to a dealer generally when he -- regardless of
11 where he sells a truck?
12 A. Yes.

23. PAGE 39:16 TO 40:17 (RUNNING 00:01:08.200)

16 Q. Did he get any sales assistance to
17 sell trucks to Bulkmatic at that time?
18 A. I can't remember. I don't think so.
19 Q. Mr. Yelles told you he was not going
20 to release sales assistance to Bulkmatic, right,

21 in your notes?

22 A. Yes.

23 Q. You don't recall him changing his
24 mind on that, do you?

00040:01 A. There was no sales assistance.

02 MR. HEEP: Objection. The question is
03 misleading inasmuch as it assumes that sales
04 assistance was requested.

05 BY MR. MACK:

06 Q. What did you mean when you said, "JY
07 will not release discount?"

08 What discount were you
09 referring to?

10 A. Sales assistance and/or the
11 established discount for Bulkmatic.

12 Q. Did Mr. Yeager receive either sales
13 assistance or the established discount for
14 Bulkmatic?

15 MR. HEEP: Same objection.

16 BY THE WITNESS:

17 A. I don't believe he did.

24. PAGE 40:19 TO 41:07 (RUNNING 00:00:39.000)

19 Q. How did you know this was a Chicago
20 Mack account?

21 A. Because I had Polzer Mack as one of
22 my dealers and they are in Gary, Indiana and
23 actually Bulkmatic is in Gary, Indiana or the
24 outskirts. It's in Polzer's AOR but Chicago,
00041:01 from the time it was a factory branch, had sold
02 Bulkmatic. I aware of the account.

03 Q. We are here today two years later or
04 two-and-a-half years later.

05 Has Mr. Yeager ever sold any
06 trucks to Bulkmatic?

07 A. No.

25. PAGE 41:15 TO 43:11 (RUNNING 00:02:23.700)

15 Q. Is this another phone conversation,
16 sir, or notes of another phone conversation that
17 you had with Mr. Yelles?

18 A. Yes.

19 Q. Would you read into the record, sir,
20 the last paragraph?

21 A. I was told to phone Dave/write him a
22 market-share letter and provide year to date
23 results. Dave should sell in his own AOR,
24 Toledo.

00042:01 Q. Is that -- did Mr. Yelles say to you
02 on December 19 of 2001, Dave should sell in his
03 own AOR, Toledo?

04 A. That's correct.

05 Q. Do you recall what incident, if any,
06 was behind this phone conversation?

07 A. Well, Jeff Yelles to me a phone
08 conversation 12/19. Where is Yeager getting all
09 this information about John McCafferty and Jeff
10 Yelles to make the statements in his faxes.

11 I have to think that there was
12 a fax sent that had mentioned John McCafferty as
13 a district manager and Jeff Yelles as the RVP, I

14 would think.

15 I wanted to know where they
16 got all that information about John McCafferty
17 being a district manager or something. I told
18 Jeff that I answered Dave's questions Dave asked
19 me. I am assuming at this point.

20 Q. Well, let's deal with what you
21 remember.

22 Was Mr. Yeager attempting, in
23 December of 2001, to sell trucks outside his AOR?

24 A. Yes.

00043:01 Q. Is it fair to say that during the
02 years that you have been Mr. Yeager's district
03 manager, he has attempted to sell trucks outside
04 his AOR?

05 A. Yes.

06 Q. He hasn't limited his sales efforts
07 to his own AOR?

08 A. That's correct.

09 Q. He has gone and tried to sell trucks
10 hundreds and thousands of miles away, hasn't he?

11 A. Yes.

26. PAGE 44:05 TO 49:02 (RUNNING 00:04:49.500)

05 Q. Do you recognize this, sir?

06 A. Yes.

07 Q. Is this a sales assistance request
08 you made for Toledo Mack in connection with a
09 company known as R & J Trucking?

10 A. This is an e-mail, not a sales
11 assistance request.

12 Q. Who did you send the e-mail to?

13 A. To Jeff Yelles.

14 Q. Why did you send the e-mail?

15 A. Because I had -- can I read this
16 here for a minute?

17 Q. Sure.

18 A. Evidently, I had a sales assistance
19 request from Toledo Mack for CH613 a factory
20 order unit for R & J Trucking out of Youngstown,
21 Ohio which is considered a national account.

22 I sent Scott Freeman, who is
23 the national account representative of the sales
24 assistance a cross checked e-mail. And he
00045:01 advised me. He thinks Mack Trucks, Inc. does not
02 have to issue sales assistance to a dealer on a
03 national account but is not sure and has advised
04 me to discuss this with you and/or legal
05 department for clarification.

06 I phoned Scott to discuss and
07 he informed me MTI is working on a three-year
08 deal at this time and wants to be cautious, not
09 to muddy the water and compromise the deal. I
10 need some direction to handling this sensitive
11 situation. Please advise me.

12 Q. And then did you have a phone
13 conversation with Mr. Yelles about that?

14 A. Yes.

15 Q. On February the 19th?

16 A. Yes.

17 Q. What did Mr. Yelles tell you?

18 A. Jeff Yelles to JWL, which is me,
 19 advised Dave Yeager -- I was to advise Dave
 20 Yeager that National account is National
 21 accounts. They have been National accounts for
 22 years in reference to the R & J deal here. We
 23 can always use -- okay.

24 Q. Let's stop there and then there is
 00046:01 a -- he told you to tell Mr. Yeager that National
 02 accounts is National accounts.

03 Did you deliver that message
 04 to Mr. Yeager at the instruction of your boss?

05 A. Yes, I did.

06 Q. Was that something that you were
 07 personally in agreement with?

08 A. No.

09 Q. You were doing this, again, because
 10 you were told to do it?

11 A. Yes.

12 Q. What did you tell Mr. Yeager?

13 A. I told him that National accounts
 14 were National accounts.

15 Q. By that did you mean that dealers
 16 weren't supposed to sell to National accounts?

17 A. Yes.

18 Q. That's what Mr. Yelles had told you?

19 A. That's correct.

20 Q. Now, Mr. Yelles -- you have some
 21 more there and you have that in quotes.

22 Would you tell us what
 23 quotations you wrote down there?

24 A. Yes. In response to -- in the
 00047:01 conversation with Jeff Yelles and myself there,
 02 he advised me to tell Toledo Mack that National
 03 accounts is National accounts and we can always
 04 use that the customer does not want the discounts
 05 released as an excuse or we can use -- and we
 06 have used this on refuse deals for years and it
 07 seems to work.

08 Q. Now what excuse are you -- was he
 09 talking about there?

10 A. About the -- that we can say that
 11 the customer didn't want the discount released to
 12 another dealer to quote him trucks.

13 Q. How would that -- what did that have
 14 to do with any of this?

15 A. That would be the reason that we
 16 weren't going to release the discount; that the
 17 customer didn't want the discount released.

18 Q. I got you. So you tell the dealer
 19 that the customer didn't want the discount
 20 released. So as an excuse so you wouldn't have
 21 to a give a discount on a sale to a National
 22 account?

23 MR. HEEP: Objection to the form of the
 24 question. Go ahead.

00048:01 BY MR. MACK:

02 Q. By you, I mean Mack. I don't mean
 03 you personally, Mr. Lusty.

04 A. Yes.

05 Q. Mr. Yelles told you in that
 06 conversation "We have used this on refuse deals
 07 for years and it seems to work"; am I right?

08 A. That's correct.
09 Q. Were you familiar with what he was
10 suggesting there? And by familiar, had you seen
11 that before.

12 MR. HEEP: Objection vague.

13 BY MR. MACK:

14 Q. Using that excuse?

15 A. Probably by '02, yes.

16 Q. Have you seen it since?

17 MR. HEEP: Same objection.

18 BY THE WITNESS:

19 A. I have seen it within the last year.

20 BY MR. MACK:

21 Q. With respect to Mr. Yeager?

22 A. Yes.

23 Q. By "it," we are referring to telling

24 Mr. Yeager that the customer didn't want the
00049:01 discount released as a excuse?

02 A. Yes.

27. PAGE 49:10 TO 50:23 (RUNNING 00:01:39.500)

10 Q. Is this an exchange of e-mails
11 between you and Mr. Freeman in February of 2002?

12 A. Yes.

13 Q. Who was Mr. Freeman?

14 A. Scott Freeman is a National accounts
15 sales representative and formally the vice
16 president of National accounts.

17 Q. For Mack Trucks?

18 A. Yes.

19 Q. In February of 2002, was -- do you
20 know what position he had?

21 A. There was a change and I am really
22 not sure when the change was, but I believe, at
23 that point, he was just a National account sales
24 representative.

00050:01 Q. But at some time he became vice
02 president of national accounts?

03 A. That was prior to that.

04 Q. Some time he was vice president of
05 national?

06 A. He was, at one time, vice president
07 of National accounts.

08 Q. And you had put in -- why had you
09 contacted him about R & J Trucking or
10 Mr. Yeager's attempts to sell to R & J?

11 A. Because I had a sales assistance
12 request from Toledo Mack for R & J Trucking out
13 of Youngstown.

14 Q. Was that one of his accounts,
15 Mr. Freeman's accounts?

16 A. Yes.

17 Q. Did Mr. Freeman tell you when it is
18 a National account, we do not have to provide a
19 sales allowance?

20 A. Yes.

21 Q. Did he also ask you to back them
22 away from muddying the waters?

23 A. Yes.

28. PAGE 50:24 TO 51:04 (RUNNING 00:00:19.700)

24 Q. What did you understand him to mean
00051:01 by the use of the phrase "muddying the waters?"
02 A. That we didn't need another dealer
03 quoting this account that could possibly queer
04 the deal, for lack of a better word.

29. PAGE 51:08 TO 51:12 (RUNNING 00:00:15.500)

08 Q. This was an account that Mack Trucks
09 was selling to -- directly; right?
10 A. Yes.
11 Q. Mr. Freeman didn't want Mr. Yeager
12 soliciting that account, did he?

30. PAGE 51:21 TO 51:21 (RUNNING 00:00:00.700)

21 A. He did not.

31. PAGE 55:21 TO 58:13 (RUNNING 00:02:37.900)

21 Q. Are these notes of a conversation
22 that you had with Mr. Yelles on October 9, 2002?
23 A. Yes.
24 Q. Did this relate to a particular
00056:01 customer?
02 A. Yes.
03 Q. Was that a customer Mr. Yeager was
04 trying to sell?
05 A. Yes.
06 Q. Is that customer Beelman?
07 A. Beelman, yes.
08 Q. What business is Beelman in?
09 A. Bulk haul operation.
10 Q. What type of product would they be
11 looking for?
12 A. Probably dry bulk concrete, I
13 believe.
14 Q. But what type of Mack products --
15 A. Oh, I am sorry.
16 Q. (Continuing.) -- would Mr. Yeager be
17 selling to them?
18 A. It could have been a C8, CX. I
19 can't remember exactly which one it was.
20 Q. Were they by a vocational truck?
21 A. Yes.
22 Q. What did Mr. Yelles say to you
23 during this conversation?
24 A. He told me to cross check with Jim
00057:01 Ebling who is the National accounts rep that was
02 calling on Beelman at the time. And he told me
03 that Toledo Mack is just soliciting customers on
04 price; that we have to beat the living shit out
05 of him and that he is a son of a bitch.
06 Q. Are those exact quotes, sir?
07 A. Yes.
08 Q. Now, Beelman was a National account
09 of Mack Trucks; is that right?
10 A. That's correct.
11 Q. Mr. Yelles was objecting to the fact
12 that Mr. Yeager was soliciting him; is that
13 right?
14 A. Yes.
15 Q. He also was objecting to the fact

16 that Mr. Yeager was soliciting them on price.

17 A. Yes.

18 Q. Now, when he said we have to beat
19 the living shit out of him, did you take him
20 seriously?

21 MR. HEEP: Objection to foundation, but go
22 ahead.

23 BY THE WITNESS:

24 A. Yes, he said it.

00058:01 BY MR. MACK:

02 Q. Did you view that as a threat
03 against Mr. Yeager?

04 A. That was somewhat a threat, I would
05 think.

06 Q. What type of tone did he use in his
07 voice?

08 A. It was a serious tone.

09 Q. He then said, "he is
10 son-of-a-bitch."

11 Now, have you heard Mr. Yelles
12 use other profanity to refer to Mr. Yeager?

13 A. Yes.

32. PAGE 58:14 TO 62:15 (RUNNING 00:04:53.200)

14 Q. If you take a look, sir, at the next
15 page.

16 October 28, 2002, this is two
17 or three weeks later than the previous
18 conversation with Mr. Yelles; is that right?

19 A. Yes.

20 Q. Are these notes of another
21 conversation you had with Mr. Yelles?

22 A. Yes.

23 Q. This related to a deal involving Vo
24 Mack; is that right?

00059:01 A. Yes.

02 Q. Mr. Yeager was trying to get some
03 trucks from Vo Mack?

04 A. That's correct.

05 Q. To sell to another customer; is that
06 right?

07 A. Yes.

08 Q. Those trucks, were they listed on
09 dog catcher?

10 A. I am not sure if these particular
11 trucks ended up being on dog catcher or not, but
12 that was the original question.

13 Q. Why are you asking Mr. Yelles, are
14 these units on free floor planning?

15 A. Because Dave Yeager -- and I can't
16 remember if he had sent me a fax addressed to me
17 questioning these trucks if they were on free
18 floor plan.

19 I believe his salesman there
20 saw these trucks sitting on the lot if I am not
21 mistaken had some interest in those and wanted me
22 to verify whether these trucks were on dog
23 catcher or not.

24 Q. What did Mr. Yelles say to you?

00060:01 A. Who cares if they are on the dog
02 catcher. The dealer advertised that the truck's

03 on dog catcher, if they want to sell. I am not
04 saying some don't fall through the cracks; but if
05 they are on dog catcher, he can buy them.
06 Q. Did he ever answer your question of
07 whether or not the trucks were on free floor
08 plan?
09 A. Not at that time, maybe at a later
10 date. I can't really remember that.
11 Q. In that call did he do that?
12 A. No.
13 Q. Then would you read -- strike that.
14 Would you tell us what
15 happened in the rest of that conversation with
16 Mr. Yelles?
17 A. I stated to Jeff that I had to get
18 answers for Dave; that I am on the firing line.
19 And that statement was made because of the faxes
20 that were coming addressed to me and he was
21 requesting information and demanding answers.
22 And Jeff's answer to when I stated that I was on
23 the firing line, he said, "We all are. I hope we
24 whip the son of a bitch. When he is down, I will
00061:01 keep kicking," excuse me, ma'am, for some of
02 these words but "keep kicking the prick."
03 Q. Mr. Lusty, you are under oath and
04 you are just responding to questions in quoting
05 someone else. And no one in this room is --
06 A. Oh, okay.
07 Q. They understand that, as part of
08 their job so don't --
09 A. Well, for the record, I want to
10 apologize for whatever I say if it's offensive.
11 Q. I appreciate that.
12 A. And I am just telling you that and I
13 stand corrected. No, I am not correcting but I
14 would like to be a gentleman.
15 Q. Just back to these comments about
16 whipping the SOB and kicking the prick, was
17 Mr. Yelles referring to Mr. Yeager?
18 A. Yes.
19 Q. This was a conversation with you and
20 Mr. Yelles about Mr. Yeager; right?
21 A. That's correct.
22 Q. Did you take that as a threat
23 against Mr. Yeager?
24 A. That was getting to the point where
00062:01 it was starting to look like, yeah, it's not
02 good.
03 Q. You didn't interpret this as -- you
04 interpreted this as a serious matter; right?
05 A. Serious statement, yes.
06 Q. Did he also say or at the end of the
07 conversation, "I don't know how you feel, but he
08 is a prick?"
09 A. Yes, he did.
10 Q. You responded to Mr. Yelles, didn't
11 you?
12 A. Yes, I he.
13 Q. What did you say?
14 A. I said, "I don't either way. That's
15 not my place."

33. PAGE 62:16 TO 66:07 (RUNNING 00:04:09.000)

16 Q. If we move ahead to January 21st,
 17 2003, M0164381 almost -- 1/21/03.
 18 A. 1/21/03?
 19 Q. Yes, sir.
 20 A. 11:42 a.m.?
 21 Q. Yes. Is this another conversation
 22 you had with Mr. Yelles?
 23 Do you want to read it
 24 yourself first? Go ahead.
 00063:01 A. Yes.
 02 Q. This conversation related to an
 03 attempt by Mr. Yeager to sell to Florida Rock; is
 04 that correct?
 05 A. That's correct.
 06 Q. What business was Florida Rock in?
 07 A. The vocational business.
 08 Q. Is Mr. Yeager trying to sell
 09 vocational trucks to Florida Rock?
 10 A. That's correct.
 11 MR. HEEP: I want to clarify, was your
 12 question, is everything on this page about
 13 Florida Rock or is some part of this conversation
 14 about Florida Rock.
 15 MR. MACK: I was sloppier than that. I
 16 said, "Was this a conversation about Florida
 17 Rock?"
 18 BY MR. MACK:
 19 Q. There is also a note at the bottom
 20 about customer PJAX; right?
 21 A. That's correct.
 22 Q. Let's put the PJAX part to the side
 23 for a second and just talk about Florida Rock.
 24 Did Mr. Yelles say to you,
 00064:01 "You steer clear of this?"
 02 A. Yes.
 03 Q. You put in your notes, Florida Rock
 04 deal?
 05 That's what you understood him
 06 to be referring to?
 07 A. Yes. That's correct.
 08 Q. What is this first part of the
 09 conversation was about; right?
 10 A. That's correct.
 11 Q. Did Mr. Yelles say to you in this
 12 conversation, "no good cocksucker?"
 13 A. Yes.
 14 Q. Was he referring to Mr. Yeager?
 15 A. Yes.
 16 Q. And did Mr. Yelles say to you, "I
 17 hate to feel that way about anyone, but that's
 18 what he is"?
 19 A. That's correct.
 20 Q. Then did he say to you, "Too bad we
 21 can't work out our deal like Weldon's deal"?
 22 A. Yes.
 23 Q. That's a reference to Wyn Weldon who
 24 owned another dealership in your region; is that
 00065:01 right?
 02 A. Yes, sir.
 03 Q. Had Mack terminated or attempted to

04 terminate Mr. Weldon?
05 A. Yes.
06 Q. They ended up working out a deal
07 with him; is that right?
08 A. I wasn't privy to that deal. But I
09 would assume so because he is not there.
10 Q. He is out of the system; right?
11 A. Yes, that's correct.
12 Q. And Mr. Yelles, in this
13 conversation, with you referenced Mr. Weldon's
14 deal?
15 A. Yes.
16 Q. And he said, "Too bad we can't work
17 out our deal like Mr. Weldon's deal?"
18 MR. HEEP: Asked and answered. Go ahead.
19 BY MR. MACK:
20 Q. He said, "Do you think he would go
21 for that?" Is that right?
22 A. Yes.
23 Q. What did you understand him to mean
24 when he said, "Do you think he would go for
00066:01 that?"
02 A. I knew a little bit about that deal,
03 but I didn't know the whole thing. Whatever the
04 terms were, he thought maybe that Toledo Mack
05 would go for a deal like that. And he asked me,
06 "Do you think they would go for that and my
07 answer to that statement is, "I don't know."

34. PAGE 66:08 TO 66:10 (RUNNING 00:00:10.300)

08 Q. Was it pretty clear to you,
09 Mr. Lusty, in January of 2003 that Mr. Yelles
10 wanted to get Mr. Yeager out of the Mack system?

35. PAGE 66:13 TO 66:17 (RUNNING 00:00:10.800)

13 A. Yes.
14 BY MR. MACK:
15 Q. What did you base that belief on?
16 A. Some of the statements that were
17 made and some of the instructions I had.

36. PAGE 66:18 TO 68:01 (RUNNING 00:01:14.000)

18 Q. Now at the bottom of this page, you
19 refer to a deal, PJAX.
20 Is that the name of the
21 company? Strike that.
22 Is there a company known as
23 PJAX?
24 A. PJAX, yes, out of Pittsburgh,
00067:01 Pennsylvania.
02 Q. What type of business are they in?
03 Vocational?
04 A. No. That's a trucking company,
05 regional carrier.
06 Q. Had Mr. Yeager been attempting to
07 sell trucks to PJAX?
08 A. Yes.
09 Q. Was this part of this conversation
10 with Mr. Yelles on January the 21st of 2003? Did
11 that company come up?
12 A. Yes.

13 Q. What did Mr. Yelles say to you?
14 A. That I needed to stay out of that
15 one, too.
16 Q. What did you understand that to
17 mean?
18 A. My job as a district manager is to
19 get the dealers the discount they requested or an
20 established discount.
21 I was in the process of that
22 and doing cross checks and e-mails and became a
23 little bit heated and he sort of told me I just
24 needed to stay out of that one, too, as I stayed
00068:01 out of Florida Rock.

37. PAGE 71:11 TO 76:08 (RUNNING 00:05:39.900)

11 Q. Do you recognize this, sir, Exhibit
12 7?
13 A. Yes.
14 Q. Is that your handwriting on it?
15 A. Yes.
16 Q. Does this relate to an attempt by
17 Mr. Yeager to buy 50 trucks from Mack?
18 A. Yes.
19 Q. Did Mr. Yeager explain to you what
20 he wanted to do with those trucks?
21 A. Yes.
22 Q. What did Mr. Yeager want to do?
23 A. He wanted to buy a quantity of
24 trucks at a discount and I think the strategy
00072:01 there was to -- let me just read here for one
02 second here.
03 This was an attempt by
04 Mr. Yeager to purchase a quantity of trucks from
05 Mack Trucks to compete with some of the Body
06 Builders and/or body distributors.
07 An example, RDK and some of
08 those other people who buy quantities of trucks
09 to purchase these trucks at a discount and market
10 these trucks.
11 Q. He wanted to purchase the trucks at
12 a discount from Mack and then he wanted to put
13 bodies on them and then compete and try to sell
14 those trucks to end users; is that right?
15 MR. HEEP: Objection to form.
16 MR. PARKS: You can answer.
17 BY THE WITNESS:
18 A. Yes.
19 BY MR. MACK:
20 Q. He told you he wanted to be like
21 RDK; is that right?
22 A. He wanted to compete and be that
23 type of a business, yes.
24 Q. We know that Mack sells to McNeilus,
00073:01 McClain and Hiel; right?
02 A. Yes.
03 Q. McClain, McNeilus and Hiel then
04 sells to end users; right?
05 A. Yes.
06 Q. RDK, do they sell vocational
07 products, too?
08 A. Yes.

09 Q. Do they compete then against
10 McClain, McNeilus and Hiel?
11 MR. HEEP: Objection to form.
12 BY THE WITNESS:
13 A. Yes.
14 BY MR. MACK:
15 Q. Was this then, sir, in your view an
16 attempt by Mr. Yeager to compete against McClain,
17 McNeilus and Hiel?
18 MR. HEEP: Objection to form.
19 BY THE WITNESS:
20 A. Yes.
21 BY MR. MACK:
22 Q. You had a conversation with
23 Mr. Yeager about this where he explained to you
24 what his plan was?
00074:01 A. Yes.
02 Q. Did you think he was serious about
03 doing it?
04 A. Yes.
05 Q. Now, you talked to Mr. Yelles about
06 that on July the 31st of 2001, didn't you?
07 A. Yes.
08 Q. You wrote down some notes about what
09 Mr. Yelles told you during that conversation;
10 right?
11 A. Yes.
12 Q. Those notes are on Exhibit 7?
13 A. Yes.
14 Q. Would you tell us what Mr. Yelles
15 said to you there on July the 31st? Is this on
16 the phone call?
17 A. It's on a cell phone call, yes.
18 Jeff asked me, "What's with this Yeager company?
19 This goddamn Yeager. How many trucks is this?
20 This bullshit has to stop. Didn't know why you,
21 meaning me, would pass it along."
22 Q. How did you react to that?
23 A. Well, my response to Jeff at that
24 time was I passed it along because it was an
00075:01 official sales assistance request from a dealer
02 who was interested in purchasing 50 trucks from
03 Mack Trucks. And I do work for Mack Trucks and
04 my job is to sell trucks through the dealer
05 network. I don't think it's up to me to deny a
06 request like that.
07 Q. Now then at the bottom of the page,
08 you have some more notes and you have -- the last
09 two lines are underlined at least in part.
10 Is that something else that
11 Mr. Yelles said to you?
12 A. Yes. I wanted to know how many
13 trucks. Is this a start up company? What's with
14 this company? Jeff told me he knows what he is
15 trying to do. He wants to establish discounts
16 and sell trucks all over the place. We are not
17 going to let this happen.
18 Q. Mr. Lusty, is that exactly what
19 Mr. Yelles said to you, "We are not going to let
20 this happen?"
21 A. That's what the phone conversation,
22 that's how it took place. That's what he said.

23 Q. Mr. Yelles, at the time was your
 24 boss and the regional vice president of Mack;
 00076:01 right?
 02 A. Yes, sir.
 03 Q. When he said, "We are not going to
 04 let this happen, he said that right after he
 05 said, "Mr. Yeager was trying to establish
 06 discounts and sell trucks all over the place";
 07 right?
 08 A. That's correct.

38. PAGE 87:20 TO 89:20 (RUNNING 00:01:49.300)

20 Is this a conversation that
 21 you had with Mr. Yelles?
 22 A. Yes.
 23 Q. You put down -- is it -- well,
 24 12/11/03 isn't here yet.
 00088:01 A. I am sorry. That was '02.
 02 Q. Is it '02? Is that what it was?
 03 A. Yes.
 04 Q. That happens to the best of us.
 05 Mr. Yelles was at a district manager meeting in
 06 Dallas when he called you; is that right?
 07 A. It was a -- it wasn't a district
 08 manager meeting. I could be confused, but it
 09 was -- I thought it was an ATD meeting. I don't
 10 know why I wrote district manager meeting, but it
 11 was a meeting in Dallas. It was a meeting in
 12 Dallas.
 13 Q. He had some not so nice things to
 14 say about Mr. Yeager during this call; right?
 15 A. That's correct.
 16 Q. Would you, sir, read into the record
 17 what Mr. Yelles said about Mr. Yeager during this
 18 call?
 19 A. You just want me to read straight
 20 down or --
 21 Q. Well, why don't you tell us what he
 22 said?
 23 A. All right. He said that no good
 24 cocksucker, he'd fuck up an apple cart. Don't
 00089:01 play by the rules. Some motherfucker should take
 02 this guy out. We are not here to fucking jump up
 03 and down when he gets on a deal. Where was he
 04 the last five or 10 years? He can go fuck
 05 himself.
 06 Do you know how much in legal
 07 fees this is going to cost the company? Who
 08 knows what's going to happen down the road? It's
 09 going to get a hell of a lot worse.
 10 Do you know what this is going
 11 to do to our dealers and our customers?
 12 Q. Now, you wrote over in the right
 13 hand margin, "Jeff very upset?"
 14 A. Yes.
 15 Q. Why did you write that?
 16 A. Because that was the tone of the
 17 conversation. He was very upset.
 18 Q. Did you take these remarks from
 19 Mr. Yelles very seriously?
 20 A. Yes, I did.